

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2008SF2749
)	EEOC NO.: 21BA81619
MICHAEL O'BANNON)	ALS NO.: 09-0584
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners David Chang, Marylee V. Freeman, and Charles E. Box presiding, upon Michael O'Bannon's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2008SF2749; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

1. On April 11, 2008, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged in his charge that Caterpillar, Inc. ("Employer") failed to rehire him because of his race, Black (Count A), and his arrest record (Count B), in violation of Sections 2-102(A) and 2-103(A) of the Illinois Human Rights Act (the "Act"). On March 4, 2009, the Respondent dismissed Count A of the Petitioner's charge for Lack of Substantial Evidence and Count B for Lack of Jurisdiction. On April 3, 2009, the Petitioner filed his first Request for Review. On May 18, 2009, after the Respondent concluded that it wished to further investigate the Petitioner's charge, the Commission vacated the dismissal of the Petitioner's charge and remanded it to the Respondent for further investigation. On September 11, 2009, the Respondent again dismissed Counts A and B of the Petitioner's charge, this time for Lack of Substantial Evidence as to both counts. On October 14, 2009, the Petitioner timely filed this instant Request.
2. The Employer had initially hired the Petitioner on January 9, 2006. Two days into his employment, the Petitioner was arrested pursuant to an outstanding warrant for his arrest. When the Petitioner failed to return to work, the Employer discharged the Petitioner on January 18, 2006.

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

3. The Employer had in place a policy which provided that discharged employees were ineligible to be rehired. Therefore, once the Employer discharged the Petitioner, the Employer placed the Petitioner on its "not eligible to rehire" list.
4. On October 12, 2007, the Petitioner completed on-line application for employment with the Employer. The Employer scheduled a pre-employment test for the Petitioner on October 22, 2007. However, the Employer cancelled the Petitioner's appointment when the Petitioner's name appeared in the Employer's database as a person who was ineligible for rehire.
5. In his charge, the Petitioner alleged the Employer failed to rehire him because of his race and his arrest record. In his Request, the Petitioner further states for the first time in his Request that the Employer also refused to rehire him in retaliation for having filed a charge of discrimination.
6. In its response, the Respondent asks the Commission to sustain its dismissal of the Petitioner's charge because there was no substantial evidence the Employer's stated reason for not rehiring the Petitioner in October 2007 was a pretext for discrimination.

CONCLUSION

The Commission concludes that the Respondent properly dismissed all counts of the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747 (March 7, 1995), 1995 WL 793258 (Ill.Hum.Rts.Com.)

In this case, the Petitioner does not dispute that following his arrest in January 2006, he never returned to work at the Employer. The Employer terminated him, and there is no dispute concerning the existence of the Employer's policy, which precluded it from rehiring terminated employees. There has been no evidence presented from which the Commission could conclude the Employer was motivated by the Petitioner's race and/or arrest record, as opposed to its preexisting policy regarding terminated employees.

The Petitioner contends, at minimum, there were former employees of various races, but without arrest records, who were rehired by the Employer following termination. However, those employees were not similarly situated to the Petitioner. Rather, the Respondent's investigation revealed that those employees were members of a union. In their cases, when the Employer attempted to terminate them, the union filed grievances on their behalf, and those employees were returned to their positions as a result of the grievance process.

Finally, the Commission cannot consider the Petitioner's new allegation of retaliation raised for the first time in his Request because the Commission does not have jurisdiction to review new allegations or charges of discrimination raised for the first time in a request for review. See 775 ILCS 8-103 (West 2010).

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Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of his charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Caterpillar, Inc., as Respondents with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

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Entered this 12th day of May 2010.

Commissioner David Chang

Commissioner Marylee V. Freeman

Commissioner Charles E. Box